

# Free Men and Genuine Judges will Remember about Free Courts

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Adam Bodnar Fr 26 Jan 2018

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I was sitting next to him in July and December 2017 at the Polish Senate. We waited long hours for a chance to speak to the Senators and try to convince them that the Supreme Court reform is a threat to judicial independence. Stanisław Zabłocki, once a distinguished attorney, now the President of the Criminal Chamber of the Supreme Court, was making his final stand – for the future of the Polish judiciary, Polish democracy and constitutionalism.

For myself, being the Ombudsman, it was a moral duty to oppose the changes to the Polish judiciary. Any restriction of judicial independence means – sooner or later – restriction of rights and freedoms. Without independent courts, citizens would be at the mercy of the political or financial interests of an omnipotent state. But for Judge Zabłocki proposed judicial reform was something more, since he had devoted his life to shaping rule of law standards.

He started his career in the 1970s. As a young barrister, he represented victims of communist repression during the Martial Law. He took a personal risk and played a great part in the honourable tradition of the Polish bar association which contributed to regaining freedom in 1989.

After 1989, he decided to represent the family of Captain Witold Pilecki, a Polish hero and leader of underground army, who during the Second World War went voluntarily into the Auschwitz concentration camp, managed to escape and tell the world the truth. In Stalinist times, he was sentenced to death by a kangaroo court. Mr. Zabłocki fought for Pilecki's rehabilitation and in 1990, the Supreme Court declared Captain Pilecki innocent and in a symbolic way quashed the earlier judgment. Mr. Zabłocki could say that the Polish Supreme Court restored historical justice.

With such a professional recognition, he was invited to join the Supreme Court. While many of his colleagues have chosen high-income positions in prestigious law firms, he decided to choose public service. For over 25 years he sat on the Supreme Court, passed numerous important judgments, educated entire generations of young judges and scholars. He became a symbol of what the word "judge" means. One of his friends from the bench – Piotr Hofmański – was elected in 2014 as a judge of the International Criminal Court. It was a symbolic mark of excellence for the Criminal Chamber of the Supreme Court.

But in 2016 dark clouds started to gather over the judiciary. The ruling majority stated its intention to reform the judiciary. It was clear to public opinion that the real aim was the political subordination of key judicial institutions, including the Supreme Court and the National Council of Judiciary.

Quite unexpectedly, in July 2017, a draft law on the Supreme Court was proposed. Mr. Zabłocki decided to speak out in the Senate of the Polish Republic against the adoption of amendments concerning the Supreme Court. In July 2017, his words were heeded by many. People were on streets during demonstrations taking place in more than 200 cities. People wanted to hear what an independent judiciary means and what the role of the Supreme Court should be. Due to massive protests across the entirety of Poland, the Supreme Court law was vetoed by the President.

This first fight was won.

But then the President proposed his own draft, which repeated the most questionable previous solutions and was only marginally better than the July law.

By December 2017, when this new draft was discussed in the Parliament, emotions had faded away. Somehow people were tired of continuous attacks on democratic standards, of constant manipulation and different cover-up techniques. There were less people on streets, less interest of what may happen to the Polish judiciary. But Judge Zabłocki was in the Senate once again. In his dramatic speech, maybe the last of its kind, he said that “even if we will not have free courts and free elections, there will be free men who will remember them”. He gave hope for the future. However, this time democratic Poland lost its fight for independence of judiciary. On 20 December 2017, the President signed the new Supreme Court law, to enter into force in April 2018.

Judge Zabłocki is now 65 years old. Under previous regulations, he could have served until he was 70. Then he could have decided to retire, after the full completion of his career. No legislative body has the right to shorten the term of office of judges, including the First President of the Supreme Court. But despite protests, such shortening was written into the law. Under the new provisions, he has to retire just now, at the age of 65. Theoretically he may ask the President for prolongation of his term by additional three years; such an option is created by the new law. The President has unlimited, totally discretionary power to decide on the motion of the judge. For people like him, it might be against the very principle of judicial independence to ask politicians for anything. Especially under given circumstances.

He is not the only one. There is a number of judges of the Supreme Court who face this dilemma (approx. 40% of them). They may either ask the President for prolongation or they may leave the Supreme Court and retire. Some of them may feel that in order to keep their professional integrity they should leave without giving any concessions to anyone. That is the sense of their independency, freedom and impartiality as judges and their belief in the Constitution.

Those judges are aware that the new Supreme Court will be a different entity to the one they were building over the years. The new Supreme Court law created two new chambers. Most probably 50% of the Supreme Court judges will be rookies, among them judges delegated from lower courts by the Minister of Justice. There will also be the new First President of the Supreme Court.

They will also observe how the EU is dealing with Poland under the “rule of law” procedure. Whatever happens, those judges already know that their service to their own country will

not be lauded – the way it should be in any democratic state. Instead, they were sacrificed on the altar of a power grab by the ruling party.

But they hope that this virtue of judicial independence, as presented by Judge Zabłocki, will survive in the memory of others. In the memory of free men, but also in the memory of genuine judges of lower courts, who will face numerous challenges to their integrity in upcoming years.

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